IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3173 OF 2005

IN

SUIT NO.684 OF 2001

...

Shapoorji Pallonji Finance Ltd. ...Plaintiff

v/s.

M/s.Pan Daves Safari Tours
and Travels & Anr. ...Defendants

...

Mr.Yigal Gabriel with D.Juvetos i/b Humranwala & Co. for the Plaintiff.
Mr.Rakesh Pandey for Defendant No.2 in support.

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CORAM: D.K.DESHMUKH, J.

DATED: 11TH JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Defendant No.2 for setting aside the order passed by the court dated 15-1-2003 on summons for judgment No.559 of 2001.

2. There is no dispute that no application for leave to defend was ever filed. The court noting in the order that as none of the Defendants filed an application for leave to defend in terms of the provisions of Order XXXVII of the CPC the Plaintiff is entitled to the judgment, after hearing the Plaintiff decreed the suit.

3. In the affidavit filed in support of the motion, it is no where explained as to why when the Defendant No.2 was admittedly served with the writ of summons he did not file an application for leave to defend. Only point urged before me was that the Defendant No.2 had written letters to the Plaintiff calling upon the Plaintiff that some persons are offering the amounts which are mentioned in the letter and

therefore the Plaintiff should sell the vehicle. According to the Defendant No.2, the Plaintiff did not sell the vehicle at that time and ultimately the vehicle came to be sold for Rs.3 lakh.

. Admitted position is that when the letters were written by the Defendant No.2 to the Plaintiff, the vehicle was in possession of the Defendant No.1 and therefore the Plaintiff could not have sold the vehicle. In my opinion, if the fact that the Defendant No.1 who is the principal borrower has committed default in payment of the amount is not disputed and it is also not disputed that the amount was due to the Plaintiff from the Defendant No.1, really speaking there is no defence open to both the Defendants.

4. I see no reason to vary or modify the order passed in the summons for judgment. Motion disposed of.

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